

**Minnesota Pollution Control Agency
Greenhouse Gas Rules Hearing
Jurisdictional Documents
August 30, 2012**

Table of Jurisdictional Document Exhibits

The agency places into the hearing record the following exhibits required in 1400.220, subp. 1:

1. Request for Comments published in the 8/29/11 *State Register* [36 SR 210].
2. Proposed rules approved as to form by the Revisor of Statutes dated 4/26/12.
3. Statement of Need and Reasonableness (SONAR) & attachments dated 7/3/12.
4. Certificate of Mailing the SONAR to the Legislative Reference Library 7/6/12.
5. Dual Notice as mailed and as published in the 7/9/2012 *State Register* [37 SR 47] with Affidavit.
6. Certificate of Mailing the Dual Notice to comply with MS section 14.14, subd. 1a; and Certificate of Accuracy of the Mailing List.
7. Certificate of Giving Additional Notice of Original Dual Notice (I sent about 1388 parties notice through related GovDelivery lists vs. about 702 parties who self-registered as interested in just greenhouse gas rules). In addition I sent a supplemental hearing notice to all those who provided a hearing request and to all who registered as parties interested in the greenhouse gas rules confirming hearing plans. Finally, I emailed the appropriate legislative aides with the Notice to Legislators required under section 14.116.
8. Comment submittals on the proposed rules received by the agency during the comment period. I included a couple that were either submitted late or that supplied supplemental information after the comment deadline.
9. Letter from Chief Administrative Law Judge (ALJ) Raymond R. Krause 7/2/12, authorizing the agency to omit from the 7/9/12 Dual Notice in the *State Register* the text of the proposed rules and related letters from the agency 6/25/12 and from ALJ Manuel Cervantes on 7/2/12. The proposed rule language and related documents are available on both the Agency's Greenhouse Gas Web site and on the Agency's Notices Web site.
10. Certificate of sending Notice to Legislators required under section 14.116 and copy of transmittal letter.
11. Consultation memo from the Office of Minnesota Management and Budget on 8/21/12 required under section 14.131, and 5/25/12 Agency letter to MMB seeking its review.
- 12.
- 13.
- 14.
- 15.

Official Notices

Effective September 21, 2011, the commissioner shall develop a plan to reform medical assistance designed to improve outcomes for seniors, people with disabilities, people with complex medical needs and all other enrollee. The commissioner must request federal approval and funding for initiatives that (1) demonstrate alternative health care delivery; (2) promote personal responsibility and reward health outcomes; (3) encourage utilization of high quality, cost-effective care; (4) limit assets for certain adults without children; (5) empower and encourage work, housing and independence; (6) redesign home and community-based services; (7) coordinate and streamline services for people with complex needs (8) implement nursing home level of care criteria (9) improve integration of Medicare and Medicaid; (10) provide intensive residential treatment services; (11) seek federal Medicaid matching funds for Anoka Metro Regional Treatment Center; (12) seek waivers to allow Medicaid eligibility for children under 21 receiving care in residential facilities. All projects must be budget neutral or result in savings to the state budget. The commissioner shall report to the legislature by January 15, 2012 regarding the progress of the waiver. *Minnesota Laws 2011*, First Special Session, Chapter 9, Article 7, Section 53.

For questions regarding Medical Assistance continuing care and home and community-based waivers and payment rates, contact Laura Sayles at the Minnesota Department of Human Services, Continuing Care Administration, PO Box 64974, St. Paul, MN 55164-0974; phone (651) 431-5668.

Minnesota Pollution Control Agency (MPCA)

Environmental Analysis & Outcomes Division

REQUEST FOR COMMENTS on Planned Permanent Air Quality Rule Amendments Governing Definitions and Abbreviations; Permits and Offsets; Standards for Stationary Sources; Monitoring and Testing Requirements and Emission Inventory Requirements to be Codified in Minnesota Rules Chapters 7005, 7007, 7011, 7017 and 7019 to Comply with New Federal Air Permit Thresholds for Greenhouse Gases and Minor Housekeeping Amendments to Clarify Rule Language and Meaning, Improve Consistency, and to Incorporate One Federal New Source Performance Standard (NSPS) into State Rules

Subject of Rule: The Minnesota Pollution Control Agency (MPCA) requests comments on its proposal to make permanent amendments to air quality rules to comply with new federal air permit thresholds for greenhouse gases (GHGs) affecting the MPCA's air quality rules, along with the minor housekeeping amendments described above, to be codified in *Minnesota Rules*, chapters 7005, 7007, 7011, 7017 and 7019.

Background: On May 13, 2010, the United States Environmental Protection Agency (USEPA) issued a final rule to establish permit threshold for GHG emissions. This rule affects two permit programs: 1) the Prevention of Significant Deterioration (PSD) program for construction permits; and 2) the Part 70 (operating) permit program, also called the Title V program.

The new emissions threshold for GHGs is a potential to emit (PTE) of 100,000 tons per year (tpy) of carbon dioxide equivalent (CO₂-e). The USEPA calls this the Tailoring Rule, as the permit thresholds would be tailored to exempt facilities with lower emissions. As of July 1, 2011, the GHG permit threshold applies to both new construction projects and existing sources. A modification of 75,000 CO₂-e or more makes a change subject to a PSD review. For example, a facility would do a Best Available Control Technology determination and air emission modeling.

The rule defines GHGs as an aggregate group of six gases. These are: Carbon dioxide (CO₂), nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride.

Temporary Rule: The MPCA adopted temporary rules to address GHG permitting on January 24, 2011 under Minnesota's Good Cause Exemption, *Minnesota Statutes*, section 14.388, subdivision 1, clause (2). The statute allows an expedited process if agencies need to comply with a requirement in federal law. The exempt rulemaking process occurred in 2010 to meet the effective date of the federal permit rule of January 2, 2011.

Official Notices

Rules passed under the exempt process of *Minnesota Statutes*, section 14.388, subdivision 1, clause (2) are only good for 2 years. Therefore, the MPCA is beginning a traditional rulemaking process to replace the temporary rules with permanent rules.

Persons Affected: Minnesota is a delegated state for the PSD program. This means that the new federal PSD permit requirement is effective here immediately. No rule changes are needed to begin incorporating GHGs into PSD permits.

However, Minnesota's Part 70 permit rule refers to the Clean Air Act for applicability. The existing rule language needs to be revised permanently to conform to the new threshold in the federal rule. Additionally requirements for registration permits, capped permits and insignificant activities may need to be modified to ensure that facilities are permitted appropriately under the new federal law.

Statutory Authority: The MPCA's authority to adopt and implement the new rules is found in Minnesota Statutes, section 116.07, subdivision 4 which can be found at: <https://www.revisor.leg.state.mn.us/statutes/?id=116.07>. This provision authorizes the MPCA to adopt rules "for the prevention, abatement, or control of air pollution."

Public Comment: Affected and interested persons or groups may submit comments or information on the MPCA's proposal to adopt these permanent rules in writing or orally until 4:30 p.m. on September 28, 2011. The MPCA does not contemplate appointing an advisory committee to comment on these rules.

Public Informational Meeting: The MPCA will host a public informational meeting pertaining to this rulemaking on September 29, 2011 at the MPCA, 520 Lafayette Road N. St. Paul, in the boardroom central from 1:00 to 4:00 pm. If you plan to attend the public informational meeting you will need to first sign in and show a photo ID to security located at the north side of the MPCA building which is the main entrance to the agency. The MPCA does provide limited free parking for visitors. If visitor parking is full you may need to park off site. If you park in MPCA visitor parking you will also need to register your vehicle with security so it will not be towed. MPCA parking maps are available at: <http://www.pca.state.mn.us/index.php/view-document.html?gid=129-346.5KB> - Parking: 17.

Rule Drafts: The MPCA is in the process of preparing draft permanent rules. The temporary rule is available on the MPCA's air rulemaking web site at: <http://www.pca.state.mn.us/yhiz49d>.

Agency Contact Person: Written comments on the MPCA's proposal to adopt permanent rules on GHG permitting and housekeeping changes, questions, requests to receive a draft of the permanent rules when they are available, and requests for more information on the rule amendments should be directed to: Barbara Conti at the MPCA, 520 Lafayette Road North, Saint Paul, Minnesota, 55155-4194, phone: (651) 757-2288, fax: (651) 296-8676, and may also be directed by e-mail: barbara.conti@state.mn.us. TTY users may call the MPCA at TTY (651) 292-5332 or 1-800-657-3864.

Rulemaking Mailing List: You may request to be included in future mailings and updates specifically for this rulemaking. You may also request to be added to the MPCA's general rulemaking mailing list to receive notices of all rule efforts the MPCA is working on. Either request should be directed to: Shane Hanly at the MPCA, phone: (651) 757-2066, fax: (651) 297-8676, and may also be directed by e-mail: shane.hanly@state.mn.us. TTY users may call the MPCA at TTY (651) 292-5332 or 1-800-657-3864.

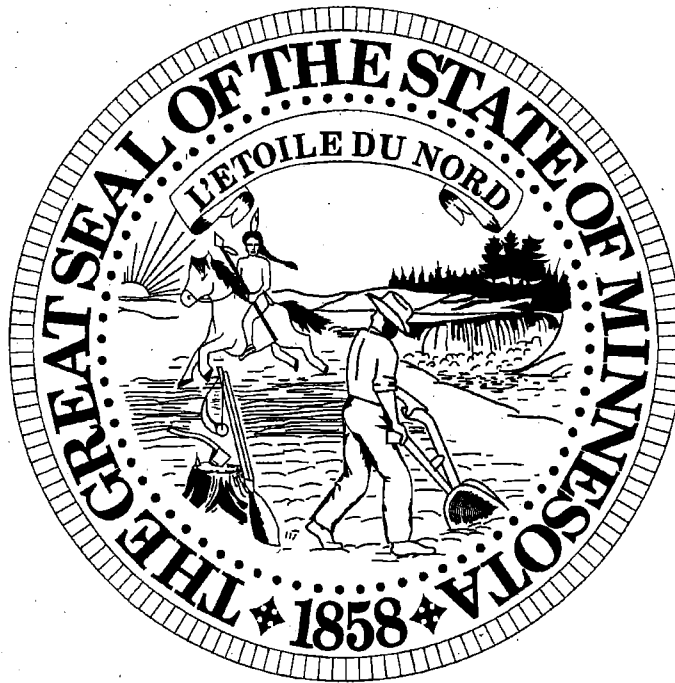
Alternative Format: Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice may not necessarily be included in the formal rulemaking record when a proceeding to adopt rules is started. The MPCA is required to submit to the administrative law judge reviewing the rules only those written comments received in response to the rules after they are formally proposed for adoption in the *State Register*.

Paul Aasen, Commissioner
Minnesota Pollution Control Agency

State of Minnesota

State Register



**Proposed, Adopted, & Expedited Rules; Executive Orders; Appointments;
Commissioners' Orders; Revenue Notices; Official Notices;
State Grants & Loans; State Contracts; Non-State Public Bids, Contracts & Grants**
Published every Monday (Tuesday when Monday is a holiday)

**Monday 29 August 2011
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State Register

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The *State Register* is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes*, Chapter 14, and *Minnesota Rules*, Chapter 1400. The *State Register* contains:

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- Commissioners' Orders
- Revenue Notices
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- State Grants and Loans
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Printing Schedule and Submission Deadlines					
Vol. 36 Issue Number	PUBLISH DATE (BOLDFACE shows altered publish date)	Deadline for: Emergency Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts		Deadline for Proposed, Adopted and Exempt RULES	
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# 7	TUESDAY 6 September	Noon Tuesday 30 August		Noon Wednesday 24 August	
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# 9	Monday 19 September	Noon Tuesday 13 September		Noon Wednesday 7 August	

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Attorney General:	Lori Swanson (651) 296-6196	Plant Management Division:	John Mikes (651) 297-4616
Auditor:	Rebecca Otto (651) 296-2551	David Fielding (651) 201-2350	Subscriptions Manager:
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Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific **Minnesota Rule** chapter numbers. Every odd-numbered year the **Minnesota Rules** are published. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules, and withdrawn proposed rules, are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety, but only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues #1-13 inclusive; issues #14-25 inclusive (issue #26 cumulative for issues #1-26); issues #27-38 inclusive (issue #39, cumulative for issues #1-39); issues #40-52 inclusive, with final index (#1-52, or 53 in some years). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 660 Olive Street (one block east of I-35E and one block north of University Ave), St. Paul, MN 55155, phone: (612) 297-3000, or toll-free 1-800-657-3757.

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Effective September 21, 2011, the commissioner shall develop a plan to reform medical assistance designed to improve outcomes for seniors, people with disabilities, people with complex medical needs and all other enrollee. The commissioner must request federal approval and funding for initiatives that (1) demonstrate alternative health care delivery; (2) promote personal responsibility and reward health outcomes; (3) encourage utilization of high quality, cost-effective care; (4) limit assets for certain adults without children; (5) empower and encourage work, housing and independence; (6) redesign home and community-based services; (7) coordinate and streamline services for people with complex needs (8) implement nursing home level of care criteria (9) improve integration of Medicare and Medicaid; (10) provide intensive residential treatment services; (11) seek federal Medicaid matching funds for Anoka Metro Regional Treatment Center; (12) seek waivers to allow Medicaid eligibility for children under 21 receiving care in residential facilities. All projects must be budget neutral or result in savings to the state budget. The commissioner shall report to the legislature by January 15, 2012 regarding the progress of the waiver. *Minnesota Laws 2011*, First Special Session, Chapter 9, Article 7, Section 53.

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Background: On May 13, 2010, the United States Environmental Protection Agency (USEPA) issued a final rule to establish permit threshold for GHG emissions. This rule affects two permit programs: 1) the Prevention of Significant Deterioration (PSD) program for construction permits; and 2) the Part 70 (operating) permit program, also called the Title V program.

The new emissions threshold for GHGs is a potential to emit (PTE) of 100,000 tons per year (tpy) of carbon dioxide equivalent (CO₂-e). The USEPA calls this the Tailoring Rule, as the permit thresholds would be tailored to exempt facilities with lower emissions. As of July 1, 2011, the GHG permit threshold applies to both new construction projects and existing sources. A modification of 75,000 CO₂-e or more makes a change subject to a PSD review. For example, a facility would do a Best Available Control Technology determination and air emission modeling.

The rule defines GHGs as an aggregate group of six gases. These are: Carbon dioxide (CO₂), nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride.

Temporary Rule: The MPCA adopted temporary rules to address GHG permitting on January 24, 2011 under Minnesota's Good Cause Exemption, *Minnesota Statutes*, section 14.388, subdivision 1, clause (2). The statute allows an expedited process if agencies need to comply with a requirement in federal law. The exempt rulemaking process occurred in 2010 to meet the effective date of the federal permit rule of January 2, 2011.

Official Notices

Rules passed under the exempt process of *Minnesota Statutes*, section 14.388, subdivision 1, clause (2) are only good for 2 years. Therefore, the MPCA is beginning a traditional rulemaking process to replace the temporary rules with permanent rules.

Persons Affected: Minnesota is a delegated state for the PSD program. This means that the new federal PSD permit requirement is effective here immediately. No rule changes are needed to begin incorporating GHGs into PSD permits.

However, Minnesota's Part 70 permit rule refers to the Clean Air Act for applicability. The existing rule language needs to be revised permanently to conform to the new threshold in the federal rule. Additionally requirements for registration permits, capped permits and insignificant activities may need to be modified to ensure that facilities are permitted appropriately under the new federal law.

Statutory Authority: The MPCA's authority to adopt and implement the new rules is found in Minnesota Statutes, section 116.07, subdivision 4 which can be found at: <https://www.revisor.leg.state.mn.us/statutes/?id=116.07>: This provision authorizes the MPCA to adopt rules "for the prevention, abatement, or control of air pollution."

Public Comment: Affected and interested persons or groups may submit comments or information on the MPCA's proposal to adopt these permanent rules in writing or orally until 4:30 p.m. on September 28, 2011. The MPCA does not contemplate appointing an advisory committee to comment on these rules.

Public Informational Meeting: The MPCA will host a public informational meeting pertaining to this rulemaking on September 29, 2011 at the MPCA, 520 Lafayette Road N. St. Paul, in the boardroom central from 1:00 to 4:00 pm. If you plan to attend the public informational meeting you will need to first sign in and show a photo ID to security located at the north side of the MPCA building which is the main entrance to the agency. The MPCA does provide limited free parking for visitors. If visitor parking is full you may need to park off site. If you park in MPCA visitor parking you will also need to register your vehicle with security so it will not be towed. MPCA parking maps are available at: <http://www.pca.state.mn.us/index.php/view-document.html?gid=129-346.5KB-Parking:17>.

Rule Drafts: The MPCA is in the process of preparing draft permanent rules. The temporary rule is available on the MPCA's air rulemaking web site at: <http://www.pca.state.mn.us/yhiz49d>.

Agency Contact Person: Written comments on the MPCA's proposal to adopt permanent rules on GHG permitting and housekeeping changes, questions, requests to receive a draft of the permanent rules when they are available, and requests for more information on the rule amendments should be directed to: Barbara Conti at the MPCA, 520 Lafayette Road North, Saint Paul, Minnesota, 55155-4194, phone: (651) 757-2288, fax: (651) 296-8676, and may also be directed by e-mail: barbara.conti@state.mn.us. TTY users may call the MPCA at TTY (651) 292-5332 or 1-800-657-3864.

Rulemaking Mailing List: You may request to be included in future mailings and updates specifically for this rulemaking. You may also request to be added to the MPCA's general rulemaking mailing list to receive notices of all rule efforts the MPCA is working on. Either request should be directed to: Shane Hanly at the MPCA, phone: (651) 757-2066, fax: (651) 297-8676, and may also be directed by e-mail: shane.hanly@state.mn.us. TTY users may call the MPCA at TTY (651) 292-5332 or 1-800-657-3864.

Alternative Format: Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice may not necessarily be included in the formal rulemaking record when a proceeding to adopt rules is started. The MPCA is required to submit to the administrative law judge reviewing the rules only those written comments received in response to the rules after they are formally proposed for adoption in the *State Register*.

Paul Aasen, Commissioner
Minnesota Pollution Control Agency